

Agricultural Marketing Service, USDA

§ 1209.251

(f) Within 45 days after a mail ballot is issued, the Council shall validate the ballots cast, tabulate the votes, and provide the Secretary with the results of the vote and the identification of the region's two nominees for each open position on the Council.

(g) The Council shall provide nominees with qualification statements and other specified information. Each nominee selected in the mail ballot will be contacted by the Council and asked to forward such completed documentation to the Council within 14 days of such notification.

§ 1209.237 Appointment.

If an employee, partner, officer, or shareholder of a producer or importer is a current member of the Council, no nominee who is also an employee, partner, officer, or shareholder of such producer or importer shall be appointed to the Council. A Council member shall be disqualified from serving on the Council if such individual ceases to be affiliated with a producer or importer within the region the Council member represents.

GENERAL

§ 1209.239 Financial statements.

(a) As requested by the Secretary, the Council shall prepare and submit financial statements to the Secretary on a periodic basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30 days after the end of the time period to which it applies.

(c) The Council shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal year to which it applies.

ASSESSMENTS

§ 1209.251 Payment of assessments.

(a) Each first handler responsible for collecting assessments on domestic mushrooms shall collect the amounts

assessed and remit such amounts to the Council on a monthly basis not later than the fifteenth day of the month following the month in which the mushrooms were marketed to or through the first handler.

(b) Each producer responsible for paying any assessment amount on the producer's own mushrooms shall remit such amount to the Council on a monthly basis not later than the fifteenth day of the month following the month in which the mushrooms were marketed by the producer.

(c) Each importer shall be responsible for remittance to the Council of any assessment amount not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States. Any such assessment amount shall be remitted to the Council on a monthly basis not later than the fifteenth day of the month following the month of entry or withdrawal for consumption into the United States. Any person who imports mushrooms, as principal or as an agent, broker, or consignee for any person who produces mushrooms outside the United States for marketing in the United States shall be considered an importer.

(d) Remittance shall be by check, draft, or money order payable to the Mushroom Council, and shall be accompanied by a report, on a form provided by the Council.

(e) A late payment charge shall be imposed on any first handler or importer who fails to make timely remittance to the Council of the total assessment amount for which the person is liable. Such late payment charge shall be imposed on any assessments not received by the last day of the month following the month in which the mushrooms involved were marketed or, in the case of imports, not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States. This one-time late payment charge shall be 10 percent of the assessments due before interest charges have accrued. The late payment charge will not be applied to any late payments postmarked within 15 days after the end of the month such assessments are due.

(f) In addition to the late payment charge, interest shall be charged at a rate of one and one-half percent per month on the outstanding balance, including the late payment charge and any accrued interest, of any account that remains delinquent beyond the last day of the second month following the month the mushrooms involved were marketed. However, first handlers paying their assessments, in accordance with paragraph (h)(2) of this section, will not be subject to the one and one-half percent per month interest under this paragraph until the last day of the second month after such assessments are due under paragraph (h)(2) of this section. In the case of imports, such a rate of interest will be charged to any account that remains delinquent on any assessments not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States. Such a rate of interest will continue to be charged monthly until the outstanding balance is paid to the Council.

(g) Any assessment determined by the Council at a date later than prescribed by this section, because of a person's failure to submit a report to the Council when due, shall be considered to have been payable by the date it would have been due if the report had been filed on time. A late payment charge and monthly interest charges on the outstanding balance shall be applicable to such unpaid assessment in accordance with paragraphs (e) and (f) of this section.

(h) In lieu of the monthly assessment payment and reporting requirements of § 1209.260 of this subpart and § 1209.60 of this part, the Council may permit a first handler to make advance payment of the total estimated assessment amount due to the Council for the ensuing fiscal year, or portion thereof, prior to the actual determination of assessable mushrooms.

(1) Each person shall provide an initial report estimating assessable mushrooms. The Council may request additional information on such estimate.

(2) Each person shall provide a final report of actual marketings during the period involved and remit any unpaid assessments not later than the fif-

teenth day of the month following the end of the period covered.

(3) Any person whose prepayment exceeds the amount paid shall be reimbursed for the amount of overpayment. The Council shall not, in any case, be obligated to pay interest on any advance payment.

§ 1209.252 Exemption procedures.

(a) Any person who produces or imports, on average, 500,000 pounds or less of mushrooms annually and who desires to claim an exemption from assessments during a fiscal year as provided in § 1209.52 of this part shall apply to the Council, on a form provided by the Council, for a certificate of exemption. Such persons shall certify that their production or importation of mushrooms shall not exceed 500,000 pounds, on average, for the fiscal year for which the exemption is claimed. Pursuant to this section, the term *on average* shall be calculated by averaging a person's estimated production or importation for the fiscal year for which an exemption is claimed with such person's production or importation in the preceding fiscal year.

(b) On receipt of an application, the Council shall determine whether an exemption may be granted. The Council then will issue, if deemed appropriate, a certificate of exemption to each person that is eligible to receive one. Each person who is exempt from assessment must provide an exemption number to the first handler in order not to be subject to collection of an assessment on mushrooms. First handlers and importers, except as otherwise authorized by the Council, shall maintain records showing the exemptee's name and address along with the exemption number assigned by the Council. Importers who are exempt from assessment shall be eligible for reimbursement of assessments collected by the U.S. Customs Service and shall apply to the Council for reimbursement of such assessments paid.

(c) Any person who desires to renew the exemption from assessments for a subsequent fiscal year shall reapply to the Council, on a form provided by the Council, for a certificate of exemption.